

WILMER CUTLER PICKERING
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October 7, 2005

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BY E-MAIL AND REGULAR MAIL

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Re: Response to the October 3, 2005 Letter Regarding Dr. Ladner's Contract

Dear Counsel:

From your letter of October 3, 2005, we understand that you have conducted a review and questioned the validity of Dr. Ladner's 1997 employment agreement. In response to your letter, we reiterate our prior statement and we submit that the contract is unquestionably valid and binding upon the University. To the extent that some have claimed in the press that the 1997 contract is invalid because it was negotiated and signed by former Board Chair William Jacobs, allegedly without the Board's authorization, that view rests on a gross misunderstanding and mischaracterization of the circumstances surrounding the contract.

As set forth below, Dr. Ladner's understanding has been that the 1997 contract was the result of an open, transparent process involving not just Mr. Jacobs, but also the Compensation Committee and the Board of Trustees. The following information, provided pursuant to Fed. R. Evid. 408, reflects Dr. Ladner's understanding of the process leading to the 1997 contract and thereby conclusively demonstrates the validity of the contract.

1. *The Compensation Committee authorized the negotiation of the 1997 contract.*

The facts support Dr. Ladner's understanding that the Compensation Committee authorized the negotiations of the 1997 contract. Because Dr. Ladner's 1994 contract was scheduled to expire on June 30, 1997, it was plainly necessary for the University to negotiate a new contract with him. On January 29, 1996, Edward Carr, then-Board Chair and Chair of the Compensation Committee, sent a letter to the members of the Compensation Committee in which he stated, "It will be our task to review the President's contract and settle on a compensation package for him for the next contract period." In the letter, Mr. Carr stated that he would send a

James Joseph, Esq.
Stephen M. Ryan, Esq.
10/7/2005
Page 2

copy of the 1994 contract to each member of the Compensation Committee and sought to schedule a meeting for late February 1996 to discuss Dr. Ladner's compensation. At the time, the members of the Compensation Committee were Mr. Carr, Mr. Jacobs, John Petty, Cyrus Ansary, and George Collins.

Moreover, in a signed Declaration (attached to this letter), Mr. Jacobs has stated:

The [Compensation] Committee had, among its duties, the task of completing a new contract for Dr. Ladner. In the months prior to the expiration of the 1994 contract, the Compensation Committee delegated to me primary responsibility for negotiating the new contract with Dr. Ladner.

Thus, Dr. Ladner correctly understood that both the prior Board Chair and the Compensation Committee were fully aware of, and in fact authorized, the contract negotiations between Mr. Jacobs and Dr. Ladner.

2. *The Compensation Committee was consulted on, and approved, the 1997 contract.*

The facts also support Dr. Ladner's understanding that other members of the Compensation Committee were consulted on or participated in the contract discussions. In a letter dated October 21, 1996, Dr. Ladner wrote to Mr. Carr, "I am enclosing what I hope will be a final draft of my contract that reflects what we both have been trying to achieve," thus demonstrating that Mr. Carr also played a role in the negotiations.

Moreover, according to Mr. Jacobs' statement:

During the course of the negotiations, I consulted with Mr. Carr and the Committee on the various terms of the proposed contract. Copies of the contract were made available to the Committee members, and the Committee discussed the terms in detail.

Finally, Mr. Jacobs has attested to the fact that, "The Compensation Committee approved the final contract." Thus, any claim that the 1997 contract was the product of secret negotiations between Mr. Jacobs and Dr. Ladner is demonstrably false. Rather, Dr. Ladner correctly understood that the 1997 contract was the product of an extended, open process involving two Board chairs and the Compensation Committee.

3. *The Board was informed of and assented to the 1997 contract.*

Dr. Ladner's understanding that the Board was aware of and approved of the 1997 contract is also grounded in fact. According to Mr. Jacobs' statement:

James Joseph, Esq.
Stephen M. Ryan, Esq.
10/7/2005
Page 3

On behalf of the Compensation Committee, I reported to the full Board about Dr. Ladner's new contract. I discussed the components of the contract with the Board and offered to provide to any Board member any details or additional information about the contract. It is my best recollection that the Board accepted my report on behalf of the Compensation Committee and supported moving forward with the contract for Dr. Ladner.

This course of dealing firmly establishes that in negotiating and signing the contract, Mr. Jacobs and the Compensation Committee had actual authority, either express or implied, to enter into the agreement on behalf of the University. As set forth above, with or without a formal vote by the Board, the Board supported the contract negotiated and signed by Mr. Jacobs. Moreover, there is no explicit provision in the by-laws or the contract itself that required a formal Board vote on a contract approved by the Compensation Committee and the Board Chair, particularly when the Board supported the contract when it was presented.

Furthermore, the fact that, as set forth above, Dr. Ladner understood the contract to have been the product of an open process in which Mr. Jacobs, the Compensation Committee, and the Board were all consulted and approved of the contract, necessarily demonstrates that Mr. Jacobs also had apparent authority to enter into the contract. The burden was on Mr. Jacob's and the Compensation Committee, not Dr. Ladner, to take whatever technical steps the Board may have believed were appropriate with respect to considering the contract. Certainly, having understood that the 1997 contract had the agreement of the Board Chair and the Compensation Committee, Dr. Ladner had every reason to believe that his counterparts were acting on behalf of the University and that they would and did take such steps. Because he was not a member of the Board at the time and, even if in attendance at meetings, would have been excluded from any discussions relating to his compensation, Dr. Ladner was in no position to conclude otherwise. As Mr. Jacobs stated, with respect to his signing of the contract:

I was acting with the support and approval of the Compensation Committee and I believe the support of the overwhelming majority of the full Board. I believe that the contract is valid and that Dr. Ladner had every reason to rely upon it as a binding agreement.

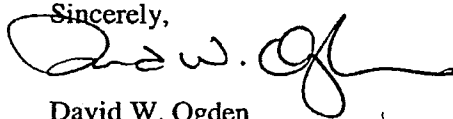
Moreover, Dr. Ladner understands that for several years thereafter, from 2001 to 2003, the Board was briefed on the terms of Dr. Ladner's compensation, including terms unique to the 1997 contract, and raised no concerns.

Thus, the 1997 contract is valid based on either the actual or apparent authority of Mr. Jacobs and the Compensation Committee to bind the University. The fact that Dr. Ladner has operated under this contract since 1997 without any objection or challenge, and has clearly and justifiably relied upon it in his actions, establishes that the University is also bound by its terms under an estoppel theory. The relevant legal authority is wholly consistent with this conclusion.

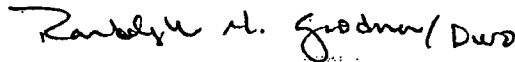
James Joseph, Esq.
Stephen M. Ryan, Esq.
10/7/2005
Page 4

Thus, we fully expect that if the University undertakes to challenge the contract, Dr. Ladner will prevail in the subsequent legal proceedings that would necessarily occur in order to uphold the contract. We believe therefore that any attempt to invalidate the contract would be unsound and would not be in the best interests of the University.

Sincerely,



David W. Ogden



Randolph M. Goodman

cc: Dr. Benjamin Ladner
Eric H. Holder, Jr., Esq.